

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN**

ROCKWELL AUTOMATION, INC. and
ROCKWELL AUTOMATION
TECHNOLOGIES, INC.

Plaintiffs,

v.

WAGO CORPORATION and WAGO
KONTAKTTECHNIK GMBH & CO. KG

Defendants.

Case No. 3:10CV718-WMC

The Hon. William M. Conley

**WAGO’S MOTION TO HOLD IN ABEYANCE
ENTRY OF JUDGMENT AND RULINGS ON WAGO’S UNCLEAN
HANDS AFFIRMATIVE DEFENSE AND ROCKWELL’S REQUEST
FOR A PERMANENT INJUNCTION AND TO GRANT ADDITIONAL RELIEF**

Defendants WAGO Corporation and WAGO Kontakttechnik GmbH & CO. KG

(collectively, “WAGO”) respectfully move the Court for an order:

1. Granting WAGO leave to take the depositions of John Miller and plaintiffs Rockwell Automation, Inc. (“Automation”) and Rockwell Automation Technologies, Inc. (“Technologies”) (collectively, “Rockwell”) pursuant to Federal Rule of Civil Procedure 30(b)(2) and (6), which will provide a record for a motion WAGO intends to file seeking appropriate relief for Rockwell’s conduct (“the Motion for Relief”);
2. Holding in abeyance:
 - a. Entry of judgment,
 - b. Issuance of Findings of Fact and Conclusions of Law on WAGO’s unclean hands affirmative defense,
 - c. Determination of Rockwell’s request for a permanent injunction;
3. Staying the briefing on pending motions, particularly:
 - a. WAGO’s Motion Pursuant To Rule 12(h)(3) To Dismiss Rockwell Automation, Inc. For Lack Of Standing (Docket No. 386) (“the Motion to Dismiss”),
 - b. Plaintiffs’ Motion For An Award And Judgment Of Prejudgment And Postjudgment Interest (Docket No. 397) (“the Motion for Interest”); and

4. Scheduling briefing on the Motion for Relief and Further Proceedings as set forth below.

This motion is supported by the Memorandum In Support of WAGO's Motion To Hold In Abeyance Entry Of Judgment And Rulings On WAGO's Unclean Hands Affirmative Defense And Rockwell's Request For A Permanent Injunction And To Grant Additional Relief and by the Declaration Of Marshall J. Schmitt also filed on this date.

On November 15, 2012, Rockwell filed a Declaration of John Miller, Vice President and Chief Intellectual Property Counsel of Automation, in support of Rockwell's Opposition to the Motion to Dismiss. (Docket No. 408.) Mr. Miller's declaration attached critical documents that have never been produced by Rockwell including: (1) the Intellectual Asset and Trademark Exclusive License Agreement between Rockwell Automation Technologies, Inc. and Allen-Bradley Company, LLC dated June 29, 2001 (Docket No. 408-1) ("the 17% License"); and (2) the Agreement and Plan of Merger Between Rockwell Automation, Inc. and Allen-Bradley Company, LLC dated March 28, 2002 (Docket No. 408-2.) ("the LLC Merger Certification"). The 17% License would have been the single most important document in the damages case had it been produced.

WAGO intends to file a Motion for Relief related to Rockwell's withholding of these critical documents. In order to fully understand why Rockwell did not previously produce these documents, however, WAGO needs to take limited discovery of Rockwell. WAGO respectfully requests that the Court preserve the status quo in the case and that WAGO be granted leave to take limited discovery. This process will permit a more deliberate consideration of appropriate consequences of Rockwell's conduct including its concealment of the 17% License and the LLC Merger Certification during discovery and during the trial proceedings, and will provide the Court with a more complete record upon which to decide the Motion for Relief.

If the Court's decision on the Motion for Relief does not otherwise dispose of WAGO's Motion to Dismiss, Rockwell's request for a permanent injunction, and Rockwell's Motion for Interest, WAGO requests that scheduling further consideration of these matters, including a sur-reply of WAGO in opposition to Rockwell's request for a permanent injunction, be done after the Court decides WAGO's Motion for Relief.

WHEREFORE, WAGO respectfully requests that the Court GRANT this motion and enter an ORDER:

1. Granting WAGO leave to take the depositions of John Miller and Rockwell pursuant to Federal Rule of Civil Procedure 30(b)(2) and (6);
2. Holding in abeyance:
 - a. Entry of judgment,
 - b. Issuance of Findings of Fact and Conclusions of Law on WAGO's unclean hands affirmative defense,
 - c. Determination of Rockwell's request for a permanent injunction;
3. Staying the briefing on:
 - a. the Motion to Dismiss,
 - b. the Motion for Interest; and
4. Entering the following schedule:
 - a. WAGO shall file its Motion for Relief within three weeks of the completion of the discovery set forth in Paragraph 2,
 - b. Rockwell shall file its response to the Motion for Relief within 21 days of the filing of the Motion for Relief,
 - c. WAGO shall file a reply in support of the Motion for Relief within 14 days of Rockwell's response; and
5. After the Court's decision on the Motion for Relief, if not mooted by that decision, the Court will schedule further and additional briefing of the matters stayed or held in abeyance pursuant to this order after an opportunity for the parties to be heard on such schedule.

6. Alternatively, WAGO requests a status conference with the Court in order to address these issues.

Dated: November 20, 2012

Respectfully submitted,

/s/ David L. De Bruin

David L. De Bruin, SBN 1016776
MICHAEL BEST & FRIEDRICH LLP
100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202-4108
T: (414) 271-6560; F: (414) 277-0656
Email: dldebruin@michaelbest.com

Marshall J. Schmitt
Gilberto E. Espinoza
MICHAEL BEST & FRIEDRICH LLP
Two Prudential Plaza
180 N. Stetson Avenue, Suite 2000
Chicago, Illinois 60601-6710
T: 312.222.0800; F: 312.222.0818
Email: mjschmitt@michaelbest.com
Email: geespinoza@michaelbest.com

John C. Scheller
MICHAEL BEST & FRIEDRICH LLP
One South Pinckney Street, Suite 700
P.O. Box 1806
Madison, Wisconsin 53701-1806
T: 608.283.2276; F: 608.283.2275
Email: jcscheller@michaelbest.com

Attorneys for Defendants
WAGO CORPORATION and
WAGO KONTAKTECHNIK GMBH & CO. KG

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Certificate Of Service

I HEREBY CERTIFY that on this 20th day of November, 2012, a copy of the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system and was served on the following counsel as indicated below.

Scott S. Balber
COOLEY LLP
The Grace Building
1114 Avenue of the Americas
New York, NY 10036-7798

☒ Via CM/ECF Service
☐ Via First Class Mail
☐ Via E-mail:
sbalber@cooley.com

Paul Tanck
Lisa Schapira
CHADBOURNE & PARKE LLP
30 Rockefeller Plaza
New York, NY 10112

☒ Via CM/ECF Service
☐ Via First Class Mail
☐ Via E-mail:
ptanck@chadbourne.com
lschapira@chadbourne.com

Kristin Graham Noel
Matthew J. Duchemin
QUARLES & BRADY LLP
33 East Main Street, Suite 900
Madison, WI 53703

☒ Via CM/ECF Service
☐ Via First Class Mail
☐ Via E-mail:
kg@quarles.com
matthew.duchemin@quarles.com

/s/ Gilberto E. Espinoza

Gilberto E. Espinoza